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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **DAVID MONTIEL CRUZ,**

Petitioner,

15 v.

16 **RICHARD SUBIO, Warden,**

Respondent.

C 07-4329 JSW (PR)

19 **DECLARATION OF COUNSEL IN SUPPORT OF APPLICATION FOR LEAVE TO**
20 **FILE OVERSIZED MEMORANDUM OF POINTS AND AUTHORITIES**
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**DECLARATION OF
COUNSEL IN SUPPORT OF
APPLICATION FOR LEAVE
TO FILE OVERSIZED
MEMORANDUM OF POINTS
AND AUTHORITIES**

19 I, Joan Killeen, declare under penalty of perjury that:

20 I am a Deputy Attorney General of the State of California and am admitted to practice law
21 in this state and before this Court. I have been assigned to represent respondent and to prepare the
22 answer in this case.

23 On January 8, 2008, this Court issued an Order to Show Cause, directing respondent to
24 file an answer to the petition for writ of habeas corpus.

25 The habeas petition raises nine claims with respect to petitioner's convictions of burglary,
26 lewd and lascivious acts on a child by force during the commission of burglary and kidnapping,
27 kidnapping a child under 14 years, assault by means of force likely to produce great bodily injury,
28

1 inflicting pain or suffering on a child with use of a deadly weapon, and sexual penetration by force
2 during the commission of kidnapping and with personal use of a deadly weapon. The claims, which
3 challenge the trial court's instructions at the competency, guilt, and sanity phases, admission at the
4 guilt trial of petitioner's statements to the police, prosecutorial misconduct, and sentencing
5 decisions, require a recitation of the facts underlying the claims, as well as an analysis of the law and
6 the state court opinion rejecting the claims.

7 The reporter's transcript on appeal is over 2,300 pages long and the clerk's transcript is
8 approximately 680 pages long. The trial involved the testimony of numerous witnesses, including
9 expert witnesses, for both the prosecution and the defense. In order to fully address petitioner's
10 claims, as well as to argue the harmlessness of any error found, respondent has found it necessary
11 to set forth a detailed statement of facts.

12 Respondent's memorandum of points and authorities is 54 pages long. I believe that the
13 length of the memorandum is necessary to adequately set forth the facts of the underlying crimes,
14 the facts relating to petitioner's claims, the state court of appeal's ruling on those claims, the
15 applicable federal law, and respondent's argument.

16 As counsel for respondent, I believe in good faith that the length of the memorandum of
17 points and authorities is necessary to discharge my obligation to represent respondent and to fully
18 address the issues raised by petitioner.

19 Executed on May 6, 2008, at San Francisco, California.

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21 /s/ Joan Killeen
22 JOAN KILLEEN
23 Deputy Attorney General
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